

**ICANN Transcription - Marrakech
IGO-INGO Curative Rights Protection Policy Development Process
Wednesday, 9 March 2016 0900 UTC**

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Petter Rindforth: Thanks. Welcome to the IGO-INGO Curative Rights Protection Policy Development Process Update. I'm Petter Rindforth, co-chairing together with Philip Corwin on this working group. And I would like to start with a call around the table to see who are participating. So please go ahead.

(Matthew Terezetta): Good morning. I am (Matthew Terezetta) from Iran and I'm a second time fellow here.

(David Tate): (David Tate). I'm with staff.

Marika Konings: Marika Konings, ICANN staff.

Steve Chan: Steve Chan, ICANN staff.

Philip Corwin: Philip Corwin, co-chair of the working group.

(Maria Simcova): (Maria Simcova), Finnish Legal.

Woman: (Unintelligible) Sweden.

Alistair Payne: Alistair Payne, (unintelligible) Dublin, member of the IPC and the Internet Committee.

Petter Rindforth: Thanks. And do we have anyone online? Okay. And we'll stick to the initial formalities, any new statements of interest? No? So our main topic today is to go through the memorandum from the Professor Swaine but I would like to start with two other updates that I presume will go rather quickly.

The first is if we have anything new from the GAC.

Steve Chan: Thanks, Petter. This is Steve from staff. I'm not aware of any update at this stage. I think we're working in coordination with them to try to get an update for the group. I know the group is anxiously awaiting an update from them, and so we're working with staff that supports the GAC to try to get that update as soon as we can. Thanks.

Petter Rindforth: Thanks. And the next thing is that we have also sent out a questionnaire to the ccNSO to assist us in getting some input on what - how the ccTLDs work with this case. And I'll just go through the three questions we sent out fairly quickly. To your knowledge are there any ccTLDs that have domain name dispute resolution policy that is similar to the UDRP and/or the URS and for which the basis for a compliant standing to file a complaint is not limited to trademark rights?

To your knowledge for the ccTLDs that have a domain name dispute resolution policy that is similar to the UDRP and/or the URS, do they include a new jurisdiction clause similar to that in the UDRP and/or the URS? And finally, to your knowledge for those ccTLDs that have a domain name dispute resolution policy that is similar to the UDRP and/or the URS, have any included an exception or other provision concerning IGOs including but not limited to procedures to deal with claims of immunity?

And I hope they have confirmed that they got this questionnaire. I don't know if they have come back to us with some timeline.

Steve Chan: Thanks, Petter. This is Steve Chan from staff again. We've sent it - we've had the ccNSO staff send it - distribute it. We have not yet received formal response from them as far as I'm aware. And so we'll work with them to try to get a more defined timeline for those responses. Thanks.

Petter Rindforth: Thanks. Yes?

Philip Corwin: Phil Corwin here. I just want to note for the record that throughout the process of our working group we've invited participation and input from both the GAC and the IGO small group. So we've been completely open to their input. We haven't received a lot but we've always been totally open to it, and we do hope that when the legal memo comes up that we're going to be talking about in a minute that we get feedback on that before we move to the final stage of this working group.

Petter Rindforth: Thanks, Phil. I saw in the agenda that we had the first slide with an initial presentation of this working group and what we're dealing with, but I'm counting on the participants in this room. I presume that you all rather familiar with what we're doing, but we can just put up that slide. Yes?

So, let's see, yes I see there is a number of participants also online. (David Tate) -- well some of us are also here -- but (David Tate), George Kirikos, (Kate Chapman), (Christine Durrain), Lori Schulman, Marika Konings, (Paul Tattersfield), Phil Corwin and (Rob Golding). So welcome all.

Okay then. I think we have come to the point where we can go into the main topic of today. Yes? I'll leave it over to you, Phil.

Philip Corwin: Okay are we going to go? Let's go through the slides quickly as an introduction and we can talk about the synopsis. And this working group going on about a year, a little more than a year, and we've made rapid progress on some issues where we decided that we didn't need to address non-governmental IGOs, that there was no standing issues or sovereign immunity issues.

We decided - we reached the determination that IGOs had standing to use the existing curative right processes of the UDRP and the URS based upon either trademarking their names or asserting their trademark protection rights under Article 6ter of the Paris Convention. But we could not decide up to this point the issue of whether the generally recognized scope of sovereign immunity for IGOs, whether that was intruded upon by the waiver that occurs when one brings a UDRP and submits in the current system to an appeal to a mutual jurisdiction as defined under the policy.

That would really occur - it would only occur if an IGO brought an action against a registrant, won the action, and the registrant appealed, which was an exceedingly unlikely scenario, but possible. So that's really the situation we've been talking about with the assistance of ICANN staff and some modest financial resources from ICANN.

We did a search for a legal expert to advise the working group on that question. We retained late last year Professor Edward Swaine of George Washington University Law School in Washington, D.C. The professor has supplied the co-chairs and staff with a draft memorandum of considerable length, almost 25 pages in length, with multiple footnotes looking at treatment of IGOs and sovereign immunity under - with the law in multiple jurisdictions.

The professor was unable to complete that memo in time for this meeting and didn't want a uncompleted draft going out under his name, but he did comply with our request to provide a synopsis. And we have copies, written copies, of

this synopsis up here for those who want to follow along, which gives you an idea of what his final conclusions will be.

And then we expect later this month to receive the final draft of that memo, including summary conclusions from the professor. And after some feedback from working group members and staff, that memorandum will be finalized I would assume in April, and then I would expect that the working group can hopefully proceed to a final report and recommendations before the midyear meeting in Helsinki.

That's certainly our goal. It's been rather frustrating to be sitting in place for six months waiting for this legal input, but we didn't feel it would be responsible to proceed further without that kind of expert input. So, did you want me to go through the synopsis, Petter, or did you want to share it? Or how do you want to structure?

Petter Rindforth: (Unintelligible).

Philip Corwin: Okay I'll start and if I get tired, I'll hand it back to you.

Petter Rindforth: I would also add...

Philip Corwin: Oh we have to go through the slides here. Let's go through the slides.

Petter Rindforth: You met him in person so you can explain.

Philip Corwin: Excuse me?

Petter Rindforth: You have also met the professor in person.

Philip Corwin: Yes I met with Professor Swaine face-to-face for about an hour at his offices in Washington, D.C. in early December just to explain the UDRP and the

URS to him and how that worked and what the appeal right what to a court of mutual jurisdiction, how is that defined.

He asked some questions and I believe he's indicated he found that exchange quite helpful in his understanding of, you know, his task in the context of the existing rights protection mechanisms that ICANN makes available to trademark owners and other parties in this case. As I said, we recognize that standing would exist even without a trademark if an IGO had exercised his protective rights under Article 6ter of the Paris Convention.

And basically when that occurs, for those not familiar with and I certainly wasn't familiar with it before this working group launched, that the - when a IGO basically provides to WIPO states that they want to invoke that protection their IGO name and acronyms become noted by the trademark authorities of all members of the World Trade Organization, and I know there's another. Do you recall the other group that it covers in addition to...? Well all signatories to the Paris Convention, as well as all members of the World Trade Organization, which is well over 90% of all the nations in the world.

So then basically that in terms of protection that's functionally equivalent to having a trademark under those trademark regimes. Also noting that each nation that's a - in one of those two groups has the right at the time of that registration that notifies authorities in WIPO to say no we don't wish to provide protection to that particular IGO, although we're not aware of any cases in which they've done that. But nations do have that right under the Paris Convention. That's certainly one key limitation on protection for IGOs and the present world legal system.

So going through the slides, notes that we got a draft memo in mid - toward the end of January, and we provided some feedback to the professor. We have the synopsis, which is right here. We've - aiming to produce a final

report and recommendation over the next few months, hopefully before the midyear meeting in Helsinki, Finland.

We're - we remain open to input from the GAC and the IGO small group that's working within ICANN and working on other issues related but not identical issues with the board. We would welcome more engagement by the GAC and IGO small group. It's been minimal so far.

Let's go to the next slide. Yes, the synopsis as you'll see, sovereign immunity is not a black and white issue, it's not simply IGOs have absolute immunity and that's it and we have to create an entirely new curative rights process for them because of that. It's actually - it depends on the type of IGO. Those that are affiliated with United Nations are generally afforded more protection than other types of IGOs. There are different types of immunity: absolute, which would be absolute, and then viable. But more often the immunity is of a functional or a limited nature based on various things, including the type of transactional context that's being examined. Yes?

Petter Rindforth: Just before we (unintelligible), just add when it comes to United Nations, what is interesting to see is that even if they have this you said extra protection, it's also in the regulation for United Nations a possibility to accept national legislation. So that may be a conclusion if a UN organization actually sign up for - to register a domain name or to start a UDRP proceeding that they have followed that specific extension possibility.

Philip Corwin: Yes. Thank you, Petter. We've also found that regardless of the analysis of the proper scope of immunity for a given IGO and a given type of transaction, all IGOs are free to waive that immunity at any time if they wish to take advantage of certain legal remedies. And we have found examples of IGOs filing UDRPs, the World Bank is one of them, where they have clearly decided that the possibility of an appeal to a national court is not sufficient concern to prevent them from utilizing the existing mechanisms.

Also we have found, and the Professor Swaine (unintelligible), the general way that IGOs deal with commercial contracts for goods and services that they get from third party suppliers is to negotiate if there's a clause that would provide any disputes to be - go to a court, they generally insist on striking that and putting in an arbitration clause, where it goes to some international arbitration body.

But we're dealing with a different type of transaction here. Those would be bilateral transactions between the IGO and the provider of goods and services. That's a rather simple case. What we have here is a situation where it's not just a relationship between the IGO or ICANN, and really ICANN is only involved to the extent they accredit a UDRP or URS provider, or the IGO and that provider of curative rights remedies.

There's another party involved, the domain registrant. And so it's a tri-party situation, which creates a lot more complexity. And we're not even sure that if we were to -- I'm not saying we will -- but if we were to recommend a process where there was no appeal to a court of mutual jurisdiction but an appeal to another arbitration provider or a higher level of the arbitration provider, there's no - ICANN is not a UN agency, not an international organization, it's a California nonprofit corporation, and it's not at all clear that courts in the United States or any other nation would recognize any proposed procedure that would deny a domain registrant access to a court to protect their rights, whatever their recognized rights in a domain.

So for example in the United States, it's not clear that if we provided that if an IGO brings an action that any appeal would be to an arbitration body that the domain registrant if they lost on the initial case could well go to a U.S. court and invoke their rights under the Anti-Cyber Squatting Protection Act to seek an injunction and prevent the transfer of their domain and seek adjudication by U.S. court. And it's not at all clear that a court would say well we're going to say you have no - that this decision by a California nonprofit corporation has extinguished your rights under U.S. statutory law, just as an example.

So it's a complicated situation. But the key issue for this working group is whether requesting a waiver at the initiation of the use of a rights protection mechanism unduly violates an IGO's right to immunity, particularly given the need to balance a domain registrant's legal rights and legitimate interests. So let's go to the next slide, which is probably the final one. Yes.

Yes our timeline has been delayed. There's been a delay in receiving the GAC IGO small group proposal. There was a meeting last year in Paris, and we just received the update of where things stand between the board, the GAC and the IGO small group from a few weeks ago, so there's been a - half a year delay between that meeting in Paris and this working group getting any input on where things stand. And things are still not settled between the board, the GAC and the small group on the issues they're discussing, which is whether IGO names and acronyms should have permanent protection in the new gTLDs is the chief one.

Again, we aim to conclude our work if at all possible by the Helsinki meeting and present at least a draft final report and recommendations at that meeting. Then of course it would undergo the usual public comment process for all ICANN PDPs. And we will, in our final recommendations, will address whether the UDRP and/or the URS process should be amended or whether a new curative rights process solely for IGOs should be created. I

think probably while, you know, it's not final as I mentioned, at a minimum we'll recommend, I don't know if we need amendment or the UDRP or URS or just the recognition of the fact that invocation of the protections available under the Paris Convention is in our view sufficient to confer standing on any IGO to bring a dispute under the existing UDRP or URS.

So why don't I stop there and why don't you - want to go through the synopsis a little and then we can open it up for questions.

Petter Rindforth: So I just wanted to say that the informal Paris meeting we had with GAC representatives, I had a feeling that it was a good start and we discussed the topics and they were aware of the importance to incorporate and to inform us and we should inform them about our work so that we could come to as good as possible conclusion before the public comment period.

But we haven't heard anything since April - since Paris. So we will conclude based on the expert and maybe also if we can get some further input from the ccNSOs, how it's dealt with in country codes and work forward from that point. It's important now that we not lose any more time in this work.

Philip Corwin: Yes quickly just kind of tick through the synopsis and then open it up to discussion and questions. We're doing fine on time. We've got another 45 minutes.

Petter Rindforth: Yes. I hope everybody that is online has the memorandum of two pages. And what I found interesting is if we - if you have and you can read it everyone but it's the final page where he said that legal analyzes (unintelligible) and permits more than one result but it starts with whether a mutual jurisdiction clause, an IGO might be entitled to immunity.

For example, if the UDRP will have to stand on its own without any possibility of additional resource, it might be considered as insufficient remedy for the main registrant where an IGO has indicated a UDRP complaint. Moreover it has been afforded (unintelligible) recourse to which it would otherwise not be entitled.

But what we can read from the full paper that he is still preparing, it's - it doesn't say no to the possibility to keep the dispute resolution policies as they are today. And he has mentioned a number of maximum legislations and also cases in U.K. There was some examples in other countries where the court actually have stated that even IGOs in these kind of disputes will have to accept that the case is handled by national court action.

And I said before also, as we could see from the United Nations regulation that it is already there stated that you can decide to accept a specific contract or legislation and thereby also accept to take the case to a national court. So that is still one possibility that would not force us to create a new dispute resolution policy.

Otherwise I've seen that what we in our initial conclusion that we made with the added informatives to the UDRP that will probably not be enough if you also have to add something with the second step, another arbitration step to it. So in that case we will have to write something that is similar to the current UDRP procedure I presume that is with some note that is specified for IGOs.

So I see a question from Lori Schulman. "If we do decide that we would recommend some sort of waiver for UN agencies, et cetera, how would that work, especially given RPM reviews? NTIA and WIPO has come out strongly against review of the UDRP. Perhaps this undermines WIPO's own position regarding a new procedure."

I hadn't thought about that before. Yes?

Philip Corwin: Let me respond to Lori. Number one, I think, as Lori noted, there is - there's an existing PDP going on on subsequent procedures for the next round if any new TLDs. This afternoon, the GNSO Council, of which I'm a member, will be voting on a final charter for related and parallel working group to review all rights protection mechanisms for all gTLDs.

The current proposed charter would be a two-step process, first reviewing the right protection mechanisms created for the new TLD program, the trademark clearinghouse, trademark claims notice and URS are the principle ones. The second stage of that review and that would be initiated at the conclusion of the new TLD RMP review would be the first even review of the UDRP, which

is the only ICANN consensus policy that has never been subject to review.
That is the draft charter we will have before us.

And at the meeting of the council last night to set our course today for dealing with that issue as well as the voting on the CCWG accountability mechanisms, we asked whether anyone intends to offer any amendments to that draft charter. And neither the Non-Commercial Stakeholder Group, which had wanted the UDRP to go first, nor the IPC, both stated that they now recognize that the existing proposed charter is a reasonable compromise and no amendments will be offered.

So barring any surprises, that charter will be approved by council this afternoon and we will begin after this meeting to form the working group to do that RPM review would not begin till sometime in 2017 or early 2018, because the RPM review will take some time. And the fact the UDRP will be reviewed does not mean that any changes in the UDRP substance or procedure will be recommended, it's a simply a review to see how it's going.

And I anticipate that if any changes are recommended, they'll be more in the procedures to - with the aim of ensuring more consistency and predictability in UDRP than any substantive change in the actual wording of the policy. But that's for the working group to decide and that decision will be made down the road. So I think whatever this working group recommends will probably be - provide input to that much bigger working group that's starting.

And for example if we recommend that standing be conferred by invocation of Article 6ter, right, so the Paris Convention, that could be taken into account in any recommended changes for the URS or the UDRP. So I'm just guessing but I think whatever we finally come out with be handed off to that bigger group and will become part of their recommendations, because this group is really focused on a very narrow issues within a much bigger context.

Petter Rindforth: I think you're right. Even if we have actually never talked about amending the existing UDRP or the policy on this topic, what we concluded initially was that there may be enough to make some clarifications in the recommendations in the informative papers on how to handle the UDRP that (Mark Grath) and also the forum have on their websites.

So it's either that rather simple pace or to create completely new dispute resolution policy. Because that we concluded also in our other stage that if we should put in something in the UDRP, in the existing UDRP, directly related these kind of disputes, it would be much too complicated. So it's better to have the UDRP as it is today as clear as possible, at least I'm talking from my own personal point of view. I think it's a system that works for the clean trademark dispute as it is today.

Philip Corwin: We've had a number of people come into the room since we initially went around and asked people to identify themselves at the beginning. So before we go further, could we ask those who have joined us since that initial round to just state their name and affiliation?

Sam Lanfranco: Sam Lanfranco, NPOC.

Klaus Stoll: Klaus Stoll, NPOC. And sorry, we just got lost in the transition.

Rudi Vasnick: Rudi Vasnick, NPOC and a member of this working group.

(Dennis Chan): (Dennis Chan), ICANN staff.

Oswaldo Novoa: Oswaldo Novoa, ISPCP and member of this group. Thanks.

Man: Petter?

Petter Rindforth: Yes so - please.

Rudi Vasnick: Yes Rudi for the transcript. To clear up my mind as I understand that the whole process, the uncertainty of the outcome of a UDRP process for an IGO, is it likely that the IGO would immediately go to court instead of using the UDRP to avoid that they are failing in the UDRP process? Because that seems to me is the last escape but you could use the last escape as a first one.

Philip Corwin: Well that's an interesting question, Rudi, and it really points out but if ICANN had not created these optional curative rights processes which were in addition to existing legal rights under whatever statutory law would apply if applicable jurisdiction, IGOs would have no choice if they thought someone's infringing their name acronyms but to file a lawsuit, which would immediately raise the sovereign immunity issue.

So by providing these existing curative rights process of the UDRP and the URS, we're providing them with an option where they don't have to go to court and immediately be subject to a national court jurisdiction. Now it's true that by when you invoke the UDRP, when you file a complaint, you're agreeing to an appeal. But in any case where there's - complainants win about 85% of UDRPs, although in most UDRPs they're default cases, there's no response from the registrant.

When you get to non-default cases where the registrant has strong rights and has an explanation for why they believe they're not infringing, it's much more even. It's close to 50/50 in the results of what happens in the case. But in any clear cut case where someone set up a domain page and was impersonating an IGO and for whatever purposes, to run a scam, whatever, they would almost certainly win under a UDRP, whether it's a single panelist or a three-member panel.

And again, we're - the question of whether this waiver that occurs when you file as a complainant would only become real, would only become actualized if the registrant was dissatisfied with the UDRP decision and exercised their

right to appeal the decision to a court of mutual jurisdiction as defined by the policy. And if it was a clear cut case, it's exceedingly doubtful that the registrant would take it that level because the odds of prevailing in court would be so low.

The cost of bringing a lawsuit, at least in the United States, is so much - so many multiples of the cost of the filing fees and attorney fees for a UDRP defense that it's very unlikely unless there was a really bad decision by the panelist or the three-member panelists. So we're really focused here on are we in some way violating sovereign immunity in this extremely unlikely instance of an appeal from a UDRP decision where the complainant's the IGO. But we are providing an alternative without which the IGO would have no course - to recourse if they thought they were being taken advantage of but to go to a court.

Petter Rindforth: Petter here. I don't remember the specific percentage but there's a clear majority of all UDRP cases where the domain owner does not respond at all. And even if -- I'm talking as my experience as panelist -- even in the cases where the domain holder sometimes responds, they - it could be well I'll give it away, I don't care. That is noted as a response but it's not a real legal response to the case.

So I would say that at least 75% of the cases probably are indeed within this kind of quick way - quick and clear way. It's of course a clear case also depending on the complainant how they have done when they filed the case. It must clearly indicate the protection and what kind name protection they have. But if they do that correctly and there is no response, it's a clear cut case.

And what, coming back to the INGOs, it was also interesting to see I think it was - we had to turn it from the Red Cross stated that they had one - they had used the UDRP and they had won all the cases except for one. And he frankly also accepted our initial conclusion that this process would be limited

to the URS. They are the kind of organizations that are like the UN and so, not Red Cross Olympic Committee and so on.

Philip Corwin: I just want to chime in here to add to what Petter said about the UDRP. I'll note that I'm on the - a member of the business constituency, the entity I represent on the business constituency is the Internet Commerce Association, which is a trade association of professional sophisticated domain investors, each of whom owns portfolios of thousands or tens of thousands of domain names. And there are other parties in that business.

For example, GoDaddy just bought a portfolio of domains from one of our members consisting I believe of over 85,000 domain names. So. But our members are very conscious of trademark law. They try to avoid at all costs infringement because they know that if you become regarded as a serial cyber squatter you'll fair more poorly in a UDRP and whenever a case is brought against them.

And if you have that many domains, you're going to get hit by a UDRP once in a while. They have expert counsel who are experts in trademark law. They defend every filing, and if they lose the UDRP they appeal to a court of mutual jurisdiction, and in most cases, their record in winning on appeal. So.

But I will agree with Petter, in most cases the complainant, the trademark owner or the IGO brings the case, there's no response, or the response is from a domain registrant who is not sophisticated, that has not retained a trademark lawyer and is a file A reply, it's usually not very convincing.

So there are different types of domain registrants, those who try to steer clear of infringement and defend their rights when a case is brought and those who are either blatantly infringing, and we've seen some of that with new TLDs with clearly unique trademark names have registered and just wins instantly when URSs are filed, or where they just don't understand trademark law or don't choose not to or can't afford to retain expert counsel and file a very

weak defense and consequently lose the case. So there are different types of registrants in the system.

Petter Rindforth: Thanks. Petter here. I'll just go through some of the comments from the chat room. George Kirikos says that, "I don't think an exception should be made for IGOs for numerous reasons. I already stated them on the mailing list before. We shouldn't create new laws. If they initiated any other dispute with a non-party, they must waive immunity to whichever court they brought the action."

And (Christine Durrain) from MMSO says, "And yet if anything was added, it seems the mutual jurisdiction clause is the big hang up. Any amendment to the UDRP along those lines could be simple." Adding, "It also could be complicated. But I wouldn't say that it's a foregone conclusion that we would - I don't need to wait for the impact of any other recommendations on registration agreements."

Philip Corwin: Yes, just to respond, and the folks in the chat room have been involved with our working group. Petter and I are not going to be writing, you know, we don't determine the final recommendation and conclusions that this working group will come out with. That will be a collective decision by all the members of the working group based upon the final, in significant part, upon the final legal memorandum we receive from Professor Swaine, which is a lot more detailed and sophisticated than the synopsis you see before you.

And then we'll put out a proposed, you know, a preliminary issue report and recommendations, which will be subject, as all ICANN PDPs are, to a public comment period where any party, including GAC members, IGOs, et cetera, will be able to comment and agree or disagree with our conclusions and be able to critique Professor Swaine's legal findings if they believe that there's some flaw in them.

So we've got some considerable way to go in this process. We're trying to be very careful. But I think to amplify on one point that George made, and George has been a very valuable member of this working group in bringing - he's done a lot of research that has contributed to our knowledge base as we've proceeded, ICANN is again a California nonprofit corporation. It is bound to respect existing law and to provide processes that are in accordance with and protect existing legal rights. It has no authority to create new legal rights. So that's the context we're operating within.

Petter Rindforth: Petter here. Just to follow up also from the chat list. This is of course not the full report, it's just a two-page summary as we said initially. And I completely agree with Lori and others on the chat list also that everybody needs to see the full report in order to further discuss in detail and come to some kind of conclusion for a working group. Saying that, do you remember when Professor Swaine was going to give us the full?

Philip Corwin: Well our expectation is that we will get a final draft report for review by the working group and to provide final feedback to Professor Swaine before the end of March, which would then lead to a final report based upon that feedback available to the broader public sometime in April. So, you know, nothing's 100% sure in projecting ICANN-related time tables. But the report's pretty complete. The draft that we saw was complete but for putting in the conclusions.

So there's not that much work left for the professor to do to make - to provide us with a final draft, and then we'll share that with the entire working group. So far it's only been reviewed by the co-chairs and by Mary Wong and Steve Chan, but we're going to have a process where the full working group will get the final draft report.

It may undergo some final clarifications or revisions or additions based upon feedback from the working group but I don't, you know, we'll see. Again, I don't think that'll take too long so I'm anticipating that we're going to -

everyone with an interest in this issue is going to see a final memo from the professor during the month of April. So not that much longer.

And then the working group can proceed. And again, we're hoping to have a - the next ICANN meeting's in Helsinki the last week of June. We're very hopeful that we can publish a preliminary final report and recommendations before that meeting. Maybe we'll air it at that meeting, take some feedback and then publish it for public comment. I'm not predicting what exactly the final timetable will be, but we anticipate this thing being wrapped up and, you know, the final final report being concluded by the fall in certainly this calendar year.

Petter Rindforth: I see from the chat room there's discussion about the time limit. So I'll pass on - can you update us a little bit on the time limits we have or how the process will work if we can make some kind of initial conclusion in Helsinki?

Steve Chan: Thanks, Petter. This is Steve Chan from staff. I think you're asking about the process for...

Petter Rindforth: Yes. Because our discussion here was about how many days (unintelligible).

Steve Chan: Sure. So the next step for the working group would be to draw its initial conclusions, which would be contained in the initial report. And that initial report would be subject to 40-day public comment. So I think we're to endeavor to try to get something by ICANN 56 in Helsinki I think it would be probably time-wise impossible to get a final report but I think we could aim for an initial report by that time.

And perhaps the initial report might be still open for public comment during the meeting. I'm not sure what it's really going to look like based on the discussions of the group. But that's - in terms of process that's how - what would be the next step. And the public comment, as I said, would have to be 40 days at least. Thanks.

Petter Rindforth: Thanks.

Philip Corwin: You know, from my own view, of course we'll finish as quickly as we can but I think if we can it would be good to have the preliminary report still open for public comment when we meet in Helsinki so we could have a face-to-face and people could ask questions and discuss it before the comment period is closed. But we'll just see how the timing works out.

And I'm glad, you know, that it's 40 days because this is an issue that's of great interest to the GAC, and GAC members sometimes need more time than other parties to formulate their positions. So it's good to know it'll be a full 40-day public comment period when we publish the preliminary report and then we'll take the comments into account and finalize the report after that.

Petter Rindforth: Yes please.

Steve Chan: Thanks, Petter. This is Steve again from staff. And I just wanted to remind I guess the working group that we'll - that staff will keep pushing the - for the outputs from the small group, the GAC small group as well as feedback from the ccNSO to hopefully impact or inform these discussions as well. So hopefully will be available while we're also able to consider the memo from Professor Swaine. Thanks.

Petter Rindforth: Thanks, Steve. And I definitely agree with Phil that I think also concluded from other working groups it's the best way if the public comment period is open and they still have some dates but have an ICANN meeting in between that you give some further information and also get hopefully some face-to-face comments directly from the public. I noted that the written public comments then are always much better if it's a time limit that's closely connected to an open ICANN meeting as well.

Okay. I see no further questions raised and we have also stated something about the next steps here. Phil, is there anything more on the agenda that...?

Philip Corwin: Well I don't see anyone in the room who wants to raise any points or ask any questions or in the chat room. I'd add one thing on the timetable. If after receiving the memo, the working group decided that there is some affront to IGO or at least for some IGOs an affront to their sovereign immunity in having them waive it and submit to mutual jurisdiction and appeal, it might take us somewhat longer because then we might be thinking about an additional process.

I don't know if that's a real possibility but I think we should just note for the record that that's at this point we haven't seen the final memo so we shouldn't conclude that that won't occur. That could lengthen the timetable. But without - if that - if we conclude that that's not required then we're quite optimistic we can get something, at least in terms of a preliminary report, done for discussion in Helsinki.

Rudi Vasnick: Rudi for the transcript. Do we expect some input coming from certain IGOs on the final memo we will be getting?

Philip Corwin: Rudi, we certainly hope so. As I stated at the beginning of this meeting, we have repeatedly made both GAC members and IGOs, including WIPO, quite aware of the existence of this working group, have invited their participation. They did - there was participation of WIPO and OECD I think at the meeting we had last year in Buenos Aires and the midyear meeting last year.

But we've really been quite disappointed in the lack of engagement by GAC members and by IGOs in this working group, but it's not because they haven't been afforded the opportunity. And certainly we hope that when we put out - when the memo is published that, you know, certainly WIPO has tremendous expertise in this area. If they think there's anything misstated or incorrect in

that memo, they can - are free to chime in. And then when we put out the preliminary report and recommendations, again that is their opportunity.

We're providing the opportunities; we cannot put a gun to their heads and force them to participate or to provide input if they don't want to, but if there's anything in the final report they're not happy with it's not because they haven't been afforded the opportunity at every juncture to participate and weigh in.

Petter Rindforth: Petter here. I think the one of these organizations that we can be sure that will reply is WIPO. I presume that a number of others will choose to go through GAC, which may not be in their best interest because GAC has their own also views on this topic, representing countries more than international organizations, which is not the same. And that has also been stated from the ICANN board side.

So as I said, yes we want to see of course in some part of - some time limit of this working also direct comment from IGOs but we'll see.

Philip Corwin: Just to add one other point. We've have some feedback from the GAC in some of their communiqués. I want to address one. At one point they - part of the communiqué was that whatever the process it should be at extremely low cost or free for IGOs. And I've been told that, you know, not every IGO - many IGOs are financially challenged.

Just for the record, number one the filing fee for a URS is \$500. The filing fee for a single panel UDRP is \$1,500. These are extremely, compared to litigation, these are very low costs. We did ask the GAC if they could define if they thought the existing filing fees fit the definition of low cost and we got no clear response on that.

But this working group so far has free filings. Our charge under our charter is to look at the legal issues and determine whether we need - whether they have standing, whether they can use existing processes, and whether there's

a sovereign immunity issue that requires the creation of a new curative rights process.

We have no authority to obligate ICANN or any other party to subsidize filings in the existing or any new rights protection mechanism. That's a different question that's beyond our authority of this working group. We can't obligate ICANN to subsidize UDRP or URS filings by IGOs. That's a discussion between the board, and it's outside of our authority.

Rudi Vasnick: Yes. Rudi for the transcript. Somehow I have the feeling that the GAC, or the members of the GAC, want to maintain their national authority both the aspects and let's say serenity of IGOs. At least that's my personal feeling, which makes it difficult at the end to have an approval from their side if they are preferring to defend their national laws rather than opening up a more broader opportunity to get into a debate.

Philip Corwin: Let me quickly respond to that. Based upon the preliminary draft memo we've seen from Professor Swaine, I think some of the GAC members, some of the communiqués they've signed on to have asserted rights for IGOs which go beyond the recognition of what their own nations afford IGOs. So there's some irony in that. They should maybe check with their national attorney general to see what the laws are in their nation regarding IGO immunity.

And they may - the synopsis points out that within the United States there's no uniforms. It depends on which circuit court you're in. The Supreme Court has never reconciled a different decision of some of the appeals courts on IGO immunity. So it may be not quite a black and white situation in a given nation.

Petter Rindforth: Okay. I see no further questions. I think we have gone through the agenda. So as I said, we will soon also have the full report so that - the full draft report, so that our working group can study that and make some further initial conclusions based on that stuff.

And as it seems right now, Helsinki will be an interesting meeting where we also can finally again proceed further in this process to conclude our work. So thank you all for today.

Philip Corwin: And adding to that, thank you to all who participate in this meeting both face-to-face here in this room in Marrakech and those who are I know most of the folks who are in the chat room it's the middle of the night for them, so we very much appreciate their staying up late or getting up very early to participate in this meeting. So I think we that we conclude the meeting and we give you back ten minutes that would have been devoted to this under the schedule. Thank you.

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